THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of: Bee Hive, LLC t/a Sticky Rice Holder of a Retailer's Class CR License at premises 1224 H Street, N.E. Washington, D.C. 20002	License No.: 72783 Case No.: 13-CMP-00012 Order No.: 2013-408

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Bee Hive, LLC, t/a Sticky Rice, Respondent

Michael Fonseca, of the firm Mallios and O'Brien, on behalf of the Respondent

Chrissy Gephardt, Assistant Attorney General, on behalf of the District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

This case is about a licensee that turned a routine compliance check that would have found no violations of the law into a serious violation of the District's alcoholic beverage control laws. On January 1, 2013, without justification or cause, Justin Martin, the owner of Bee Hive, LLC, t/a Sticky Rice, (Respondent), had two Alcoholic Beverage Regulation Administration

(ABRA) investigators ejected from his establishment by the establishment's security during a lawful investigation. For this reason, the Alcoholic Beverage Control Board (Board) finds that the Respondent violated District of Columbia (D.C.) Official Code § 25-823(5) by interfering with an investigation conducted by the ABRA. The Respondent shall pay a $4,000 fine and have its license suspended for twenty-five days. The Respondent shall serve fifteen suspension days, and shall receive ten stayed suspension days, which shall go into effect if we find that the Respondent has committed any additional violations within one year from the date of this Order. The suspension shall run from November 13, 2013, to November 27, 2013.

Procedural Background

This case arises from the Notice of Status Hearing and Show Cause Hearing (Notice), which the Board executed on May 3, 2013. *ABRA Show Cause File No.*, 13-CMP-00012, Notice of Status Hearing and Show Cause Hearing, 4 (May 3, 2013). The ABRA served the Notice on the Respondent, located at premises 1224 H Street, N.E., Washington, D.C., on May 7, 2013. *ABRA Show Cause File No.*, 13-CMP-00012, Service Form. The Notice charges the Respondent with a single violation, which if proven true, would justify the imposition of a fine, suspension, or revocation of the Respondent's ABC-license.

Specifically, the Notice, charges the Respondent with the following violation:

> Charge I: [On January 1, 2013,] [y]ou failed or refused to allow an ABRA investigator . . . to enter or inspect without delay the licensed premises or otherwise interfered with an investigation, in violation of D.C. Official Code § 25-823(5) . . . .

Notice of Status Hearing and Show Cause Hearing, 2.

Both the Government and Respondent appeared at the Show Cause Status Hearings for this matter on June 12, 2013. The parties proceeded to a Show Cause Hearing where they argued their respective cases on July 24, 2013.

FINDINGS OF FACT

The Board having considered the evidence contained in the record, the testimony of witnesses, and the documents comprising the Board's official file, makes the following findings:

1. The Respondent holds a Retailer's Class CR License, ABRA License Number 72783. See *ABRA Licensing File No. 72783*. The establishment's premises are located at 1224 H Street, N.E., Washington, D.C. Id.

2. ABRA Investigator Earl Jones and ABRA Investigator Kofi Apraku entered the Respondent's establishment on January 1, 2013, at 2:15 a.m. in the morning. *Transcript* (*Tr.*), Jul. 24, 2013 at 9, 72. Both investigators were monitoring establishments in the H Street, N.E., area as part of a New Year's Eve initiative conducted by the ABRA. Id. at 9-10, 72. The

investigators entered the Respondent's establishment for the purpose of engaging in a routine compliance check. Id. at 10.

3. Upon entering the establishment, the investigators identified themselves to a female employee by presenting their credentials, a photo and a badge, and requested to speak to a licensed manager. Id. at 11, 24, 73. The establishment's owner, Jason Martin, then approached the investigators near the establishment's first floor bar. Id. at 2, 11, 73. The bar area was dimly lit, but had enough light to observe the investigator's identification documents. Id. at 15.

4. Investigator Jones informed Mr. Martin that the investigators had entered his establishment in order to check the establishment's licenses. Id. at 12. Investigator Jones and Investigator Apraku showed their badges to Mr. Martin. Id. at 13-14. Mr. Martin tried to "snatch" the billfold that contained Investigator Apraku's badge and government-issued identification, but Investigator Apraku told him that he could not take his badge out of his hands. Id., 13, 47, 74-75. The investigators then requested to see the establishment's licenses. Id. at 13

5. Mr. Martin took the investigators up the stairs, to the second floor of the establishment. Id. Mr. Martin went up the stairs first, followed by Investigator Jones, who was followed by Investigator Apraku. Id. at 77. Upon reaching the second floor, Mr. Martin put his hand on Investigator Jones's chest, and told him to wait. Id. at 16, 38, 40, 78. Investigator Jones stopped near the second floor bar and waited for Mr. Martin to obtain the establishment's licenses. Id. at 16. After Investigator Jones stopped, Investigator Apraku finished walking up the stairs and stood next to Investigator Jones near the bar. Id. at 78, 108.

6. Mr. Martin went behind the second floor bar. Id. at 79. He returned with a frame that contained the establishment's licenses from the other side of the bar. Id. at 16. Mr. Martin then slammed the licenses on the bar and demanded to see Investigator Jones's identification again. Id. at 16, 80.

7. Investigator Jones presented his credentials to Mr. Martin a second time. Id. Mr. Martin then grabbed Investigator Jones's credentials. Id. In response, Investigator Jones pulled his credentials out of Mr. Martin's hands. Id. at 16, 53.

8. Mr. Martin proceeded to accuse Investigator Jones of having fake identification. Id. at 17. Mr. Martin then told the investigators that Investigator Apraku had "real" identification. Id. at 17, 81-82. He then told the investigators that if he would not let them see their identification documents, he would not allow them to view his licenses. Id. at 17. Mr. Martin then began cursing and yelling, ordering the investigators to leave the establishment, and calling on security to eject the investigators. Id. at 17-18, 85.

9. At the top of the stairs, Investigator Apraku felt Mr. Martin place his hand on Investigator Apraku's back. Id. at 85. Investigator Apraku felt Mr. Martin "pushing" him to leave the establishment. Id. at 85-86, 91. He then observed Mr. Martin make a circle motion with his hands to order security to get the investigators out of the establishment. Id. at 86-87, 102.

10. Investigator Jones attempted to leave directly out of the establishment's front door as security members began surrounding the two investigators. Id. at 18-19, 85, 90. Three to four security members then escorted the investigators out of the establishment. Id. at 18, 104. Investigator Apraku noted that he was concerned for his safety, because security tends to deal with unruly patrons in the establishment and they were unaware that Investigator Jones and Investigator Apraku were ABRA investigators when Mr. Martin summoned them. Id. at 103.

11. Upon reaching the first floor, Investigator Apraku told Investigator Jones that he had been pushed. Id. at 89. In response, Investigator Jones turned around and warned Mr. Martin that pushing an investigator could be considered an "assault."[1] Id.

12. Mr. Martin continued screaming at the investigators and ordering them out of the establishment. Id. at 20. As patrons sat around wondering what was occurring, the investigators left the establishment. Id. at 20, 89, 91.

13. The investigators then called Supervisory Investigator Stewart who arrived at the establishment approximately twenty minutes after Mr. Martin ejected the investigators. Id. The investigators entered the establishment with Supervisory Investigator Stewart and met Mr. Martin on the second floor. Id. at 21. Supervisory Investigator Stewart had the investigators show Mr. Martin their identifications. Id. Mr. Martin continued to scream and accuse Investigator Jones of possessing fake identification while saying that Investigator Apraku had proper identification. Id.

14. Investigator Jones described Mr. Martin's behavior during their encounter as "strange" and incoherent, while Investigator Apraku described Mr. Martin's behavior as "bizarre." Id. at 18, 38, 82-83. Investigator Jones also described Mr. Martin's eyes as appearing "funny" during their encounter. Id. at 38.

CONCLUSIONS OF LAW

15. The Board has the authority to fine, suspend, or revoke the license of a licensee who violates any provision of Title 25 of the District of Columbia Official Code pursuant to District of Columbia Official Code § 25-823(1). D.C. Code § 25-830 (West Supp. 2013); 23 DCMR § 800, *et seq*. (West Supp. 2013). Furthermore, after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine "that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed." D.C. Code § 25-447 (West Supp. 2013).

---

[1] It could also potentially be considered a violation of the law protecting public officials, which states,

> A person who corruptly or, by threat or force, or by any threatening letter or communication, intimidates, impedes, interferes with, or retaliates against, or attempts to intimidate, impede, interfere with, or retaliate against any official or employee, while the official or employee is engaged in the performance of his or her duties or on account of the performance of those duties, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both.

D.C. Code § 22-851(b) (West Supp. 2013).

I. Credibility

16. Mr. Martin, the owner of Sticky Rice, read a statement and testified as to his recollections of the events that occurred during the investigation. Id. at 117, 119. Based on the testimony presented by the investigators and Mr. Martin's bizarre behavior, we do not find his account credible.[2] Specifically, we find Mr. Martin's statement that Investigator Jones possessed Supervisory Investigator Stewart's identification credentials dubious and unconvincing. Id. at 124, 159. We also find it highly unlikely that two investigators failed to have proper identification with them during a routine investigation. Id. at 120. Further, if Mr. Martin believed that the two investigators possessed false identification, we fail to understand why Mr. Martin did not try to confirm their identities before leading the investigators to the second floor of the establishment. Id. at 121, 172, 174. Finally, Mr. Martin's actions and supposed fears appear unreasonable when the investigators did nothing more than ask to see his license and, as Mr. Martin claimed, he intentionally placed security near the bottom of the stairs in order to ensure that his security could observe the investigation. Id. at 121-122, 138, 155, 157, 162, 176-78, 193-94.

17. For these reasons, we are unconvinced by the testimony provided by Mr. Martin. We also credit both investigator's testimony that they possessed the appropriate credentials and presented them to Mr. Martin during the investigation. Id. at 24-25, 27, 74. Finally, we conclude that due to their encounter with Mr. Martin, Investigator Jones and Investigator Apraku did not have an opportunity to examine the establishment's license. Id. at 24, 29, 59-60, 80-81, 96.

II. § 25-823(5)

18. Under §25-823(5), it is a violation if "The licensee fails or refuses to allow an ABRA investigator . . . to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interferes with an investigation . . . ." D.C. Code § 25-823(5) (West Supp. 2013).

19. There is no rational explanation for Mr. Martin's bizarre behavior during the investigation. Investigator Jones and Investigator Apraku were engaged in a lawful investigation when they entered the Respondent's establishment. Supra, at ¶ 2. The investigators presented proper identification and gave Mr. Martin no reason to fear their presence. Supra, at ¶¶ 3, 16. Yet, he chose to end the investigation summarily by yelling and cursing at the investigators and calling on security eject the investigators from the establishment. Supra, at ¶¶ 9-10. While we have no idea what was going on in Mr. Martin's head at the time this incident occurred, we are quite convinced that Mr. Martin's actions and behavior risked causing a dangerous confrontation between security and ABRA's investigators. Supra, at ¶ 10. Moreover, Mr. Martin's bizarre behavior and hostility prevented the investigators from checking the establishment's license;

[2] See Resper v. U.S., 793 A.2d 450, 457 (D.C. 2002) ("It is clearly within the province of the trial court to make the credibility determinations needed to resolve conflicts in witnesses' testimony.")

therefore, we find that Mr. Martin unjustifiably interfered with an ABRA investigation under §25-823(5).[3] Supra, at ¶ 16.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 16th day of October 2013, finds that Bee Hive, LLC, t/a Sticky Rice, violated D.C. Official Code § 25-823(5). Accordingly, the Board imposes the following penalty on the licensee:

(1) For the violation described in Charge I, the Respondent shall pay a fine of $4,000. The Respondent shall also receive a fifteen (15) day suspension of its license for this offense. The Respondent shall also receive ten (10) stayed suspension days, which shall go into effect if the Respondent is found to have committed an additional violation of Title 25 or Title 23 within one year from the date of this Order.

IT IS FURTHER ORDERED that the Respondent must pay the fines imposed by the Board within thirty (30) days from the date of this Order, or its license shall be immediately suspended until all fines are paid.

IT IS FURTHER ORDERED that the Respondent's suspension shall begin on November 13, 2013, and end at 11:59 p.m. on November 27, 2013.

The ABRA shall deliver copies of this Order to the Government and the Respondent.

[3] Mr. Martin claims that he complied with the investigation by permitting the investigators to examine his license. *Tr.*, 7/24/13 at 123. As we note in our Order, this is factually incorrect. More importantly, a licensee has no right to dictate the length and scope of an investigation or inspection. As a result, Mr. Martin's argument that he gave the investigators enough time or opportunity to view the license is completely unpersuasive.

District of Columbia
Alcoholic Beverage Control Board

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

I concur with the decision reached by the majority of the Board as to the violation of D.C. Official Code § 25-823(5). Nevertheless, I dissent from the penalty selected by the majority. In my view, it is unusually severe; it is not commensurate with the "crime," nor does it serve the public interest.

While the facts clearly show that the Licensee interfered with the investigation in violation of Section 25-823, those facts also indicate that the Licensee's actions were not based on any mal intent. To the contrary, the Investigators describe the Licensee's behavior as "strange" and "bizarre." Certainly it was not rational or in the Licensee's best interest to scream profanities at the Investigators and withhold licenses from them during a routine compliance check where no violations would have been found.

As we state in Conclusions of Law at 15, "after holding a Show Cause Hearing, the Board is entitled to impose conditions if we determine "that the inclusion of the conditions would be in the best interests of the locality, section, or portion of the District in which the establishment is licensed." D.C. Code Section 25-447 (West Supp. 2013).

The lengthy suspension in this case serves no public interest to the locality, section or portion of the District because it does not address any problem related to this violation. No one in the establishment, including the Investigators, suffered any physical harm. The problem in this case was the Licensee's aberrant behavior. As of the date of the hearing, there had been no follow-up to determine if this behavior was a one-night occurrence or whether such behavior is continuing. In my view, it would be in the public interest to monitor the establishment rather than impose suspension days.

Ruthanne Miller, Chairperson

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).